

SENATE BILL 1803
By Herron

AN ACT to amend Tennessee Code Annotated, Title 68 and Title 71, relative to child product safety.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following as a new Chapter to be designated as follows:

§ 68-144-101. This Chapter shall be known and may be cited as the "Tennessee Children's Product Safety Act of 2005".

§ 68-144-102. As used in this Chapter, unless the context otherwise requires:

(1) "Childcare facility" means a facility as described in § 71-3-501(4).

(2) "Children's product" means a product, including, but not limited to, a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment that meets the following criteria:

(A) The product is designed or intended for the care of or use by children under six (6) years of age or is designed or intended for the care of or use by both children under six (6) years of age and children six (6) years of age or older; and

(B) The product is designed or intended to come into contact with the child while the product is used.

"Children's product" does not include products that may be used by or for the care of a child under six (6) years of age, but which are designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or for the care of a child, or products that are medications, drugs, or food intended to be ingested.

(3) "Commercial user" means any person who deals in children's products or a person who has knowledge or skill peculiar to children's products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce children's products.

(4) "Crib" means a bed or containment designed to accommodate an infant.

(5) "Department" means the department of health.

(6) "Full-size crib" means a full-size crib as defined in 16 C.F.R. § 1508 regarding the requirements for full-size cribs.

(7) "Infant" means any person less than thirty-five inches (35") tall and less than three (3) years of age.

(8) "Non-full-size crib" means a non-full-size crib as defined in 16 C.F.R. § 1509 regarding the requirements for non-full-size cribs.

(9) "Person" means a natural person, firm, corporation, limited liability company, or association, or an employee or agent of a natural person or any entity included in this definition.

(10) "Place in the stream of commerce" means to sell, offer for sale, give away, offer to give away, or allow the use of.

§ 68-144-103.

(a) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, a children's product that is unsafe.

(b) A children's product is deemed to be unsafe for the purposes of this act if it meets any of the following criteria:

(1) It does not conform to all federal laws and regulations setting forth standards for the children's product;

(2) It has been recalled for any reason by an agency of the federal government or the product's manufacturer, distributor, or importer and the recall has not been rescinded; or

(3) An agency of the federal government has issued a warning that a specific product's intended use constitutes a safety hazard and the warning has not been rescinded.

(c) A crib is presumed to be unsafe for purposes of this act if it does not conform to the standards endorsed or established by the consumer product safety commission, including, but not limited to, title 16 of the Code of Federal Regulations and the American Society for Testing and Materials, as follows:

(1) 16 C.F.R. § 1508 and any regulations adopted to amend or supplement the regulations;

(2) 16 C.F.R. § 1509 and any regulations adopted to amend or supplement the regulations;

(3) 16 C.F.R. § 1303 and any regulations adopted to amend or supplement the regulations; and

(4) The standards and specifications of the American Society for Testing Materials for corner posts of baby cribs and structural integrity of baby cribs.

(d) Cribs that are unsafe shall include, but not be limited to, cribs that have any of the following dangerous features or characteristics:

(1) Corner posts that extend more than one-sixteenth (1/16) of an inch;

(2) Spaces between side slats more than two and three hundred seventy-five thousandths inches (2.375");

(3) Mattress support that can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound (25 lb.) upward force from underneath the crib;

(4) Cutout designs on the end panels;

(5) Rail height dimensions that do not conform to both of the following:

(A) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches (9").

(B) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches (26");

(6) Any screws, bolts, or hardware that are loose and not secured;

(7) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(8) Tears in mesh or fabric sides in a non-full-size crib;

(9) A non-full-size crib that folds in a "V" shape design and does not have top rails that automatically lock into place when the crib is fully set-up; or

(10) The mattress pad in a non-full-size mesh or fabric crib exceeds one inch (1").

§ 68-144-104.

(a) The department shall create, maintain, and update a comprehensive list of children's products that have been identified as meeting any of the criteria set forth in § 68-144-103.

(b) The department shall make the comprehensive list available to the public at no cost and shall publish it on the department's website.

§ 68-144-105.

(a) A childcare facility may not use or have on the premises an unsafe children's product as described in § 68-144-103. This subsection does not apply to an antique or collectible children's product if it is not used by, or accessible to, any child in the childcare facility.

(b) The department shall notify childcare facilities on an ongoing basis of unsafe children's products, as determined in accordance with this act, in plain, non-technical language that will enable each childcare facility to effectively inspect children's products and identify unsafe children's products.

(c) The department shall promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of title 4, chapter 5.

(d) Each childcare facility shall, as part of the licensing or licensing renewal, certify in writing that it has reviewed each of the bulletins and notices issued by the department regarding unsafe children's products, and that there are no unsafe products in the facility.

(1) The department shall prepare a certification form, and shall require each facility to complete the certification form in the process of licensing or license renewal.

(2) The department shall retain the certification form completed by each facility in each respective facility's licensing file.

(e) Each childcare facility shall maintain a file containing all bulletins or notices issued by the department regarding unsafe children's products, and shall make the file accessible to the facility staff members and to parents of the children who attend the facility.

(f) The department may revoke or refuse to renew the license of any childcare facility or refuse to issue full license to the holder of a permit should the licensee or holder of a permit not comply with any section of this Chapter.

§ 68-144-106.

(a) An unsafe children's product may be retrofitted if the retrofit has been approved by the agency of the federal government issuing the recall or warning or by a federal agency responsible for approving the retrofit, if different from the agency issuing the recall or warning. A retrofitted children's product may be sold

if it is accompanied at the time of sale by a notice declaring that it is safe to use for a child under six (6) years of age. The commercial user is responsible for ensuring that the notice is present with the retrofitted product at the time of sale.

The notice shall include:

(1) A description of the original problem which made the recalled product unsafe;

(2) A description of the retrofit which explains how the original problem was eliminated and declaring that it is now safe to use for a child under six (6) years of age; and

(3) The name and address of the commercial user who accomplished the retrofit certifying that the work was done along with the name and model number of the product retrofitted.

(b) A retrofit is exempt from the provisions of this Chapter if:

(1) The retrofit is for a children's product that requires assembly by the consumer, is provided with the product by the commercial user, and is accompanied at the time of sale by instructions explaining how to apply the retrofit; or

(2) The seller of a previously unsold product accomplishes the repair, approved or recommended by an agency of the federal government, prior to sale.

§ 68-144-107. The commercial user shall not be found compliant if the specific recalled product sold was not included on the department's list on the day before the sale.

§ 68-144-108. A commercial user who willfully and knowingly violates this Chapter is guilty of a Class C misdemeanor.

§ 68-144-109. Any person, including, but not limited to, the attorney general in the county in which a violation of this Chapter occurred, may bring an action in the name of the people of Tennessee to enforce the provisions of this Chapter.

§ 68-144-110. Remedies available under this Chapter are in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.